

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

<i>In Re:</i> <i>Audio Video Excellence, Inc.</i>)	
<i>Personal Property Account No. 136247</i>)	
<i>Tax year 2007</i>)	<i>Davidson County</i>

INITIAL DECISION AND ORDER

Statement of the Case

The Davidson County Assessor of Property ("Assessor") has valued the subject property for tax purposes as follows:

APPRAISAL	ASSESSMENT
\$125,700	\$37,710

On July 3, 2007, the State Board of Equalization ("State Board") received an appeal by the taxpayer. As indicated on the appeal form, the property in question was not appealed to the Metropolitan Board of Equalization ("county board") during its regular 2007 session.

The undersigned administrative judge conducted a hearing of this matter on September 18, 2007 in Nashville. In attendance at the hearing were the appellant Scott McCrory, CPA, of Audio Video Excellence, Inc. ("AVX"), and Assessor's representative Kenneth Vinson.

Findings of Fact and Conclusions of Law

AVX is an Alabama corporation whose principal office is located at 1917 29th Avenue in Homewood, Alabama (a Birmingham suburb). In anticipation of purchasing the assets of venerable Nashville audio/video retailer Nicholson's Hi-Fidelity, AVX qualified to do business in this state on October 27, 2006.¹ The closing of that transaction occurred on February 17, 2007.

By January 1, 2007, Mr. McCrory recalled, AVX had begun what he called a "skeleton operation" in leased space at 3011 Poston Avenue in Music City. But the corporation failed to file a tangible personal property schedule for that business location with the Assessor's office by the March 1, 2007 statutory deadline. Hence, as required by Tenn. Code Ann. section 67-5-903(c), the Assessor levied a "forced assessment" on this newly-created account in the amount shown above. Notice of this assessment was sent to the site of the subject property – not to the mailing (corporate headquarters) address apparently shown on AVX's certificate of authority and business license. Thus it was not until the latter part of June, 2007 – after the published deadline for appeal to the county board – that the company actually became aware of the assessment.

A taxpayer who is aggrieved by a forced assessment has a right to review by the local and state boards of equalization; however, a direct appeal to the State Board is generally not

¹AVX's Homewood, Alabama address appears on the printout of corporate information from the Tennessee Secretary of State's Web site.

permitted unless the taxpayer was not properly notified of such assessment at least ten calendar days prior to the adjournment of the county board of equalization's annual session. Tenn. Code Ann. sections 67-5-508(b)(2); 67-5-1401; and 67-5-1412(b)(1).

The validity of a notice of forced assessment does not depend on whether it is actually received by the taxpayer. Rather, under Tenn. Code Ann. section 67-5-903(c), such notice must merely be "addressed to the last known address of the taxpayer." *See also* Tenn. Code Ann. section 67-5-508(a)(3).

Records accessed by Mr. Vinson during the hearing suggested that a conversation with the owner of AVX might have led the Assessor's office to direct the notice of forced assessment of the subject property to the company's local (Poston Avenue) address. But since he was not privy to any such communication, Mr. Vinson was not in a position to offer definitive proof on this key point. In the opinion of the administrative judge, then, the mailing address reflected on AVX's certificate of authority and business license must be considered the company's "last known address" for property assessment notification purposes. It follows that this appeal is properly before the State Board.

Under Tenn. Code Ann. section 67-5-903(d), relief from a forced assessment is expressly "conditioned upon the taxpayer filing with the board of equalization a complete listing or schedule of all the tangible personal property owned or used by the taxpayer in the operation of the taxpayer's business on the same form as required to filed with the assessor."

Order

It is therefore ORDERED that, within ten (10) days after the date of entry hereof, the taxpayer shall file the completed schedule required by Tenn. Code Ann. section 67-5-903(d) with the administrative judge and send a copy to the Assessor's office. Within five (5) days after receipt of such schedule, the Assessor shall inform the administrative judge in writing whether or not she accepts the value claimed thereon. If the Assessor does accept such value, the subject property shall be appraised and assessed accordingly for tax year 2007. If the Assessor does not accept such value, this matter will be reset for hearing on the merits upon proper notice.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

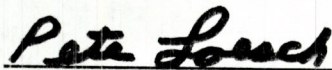
1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the

appeal “identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 12th day of October, 2007.



PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Scott McCrory, CPA, Audio Video Excellence, Inc.
Kenneth Vinson, Davidson County Assessor's Office
Jo Ann North, Davidson County Assessor of Property

AVX.DOC